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9-8.001 Supervision of Juvenile Prosecutions

Juvenile prosecutions are supervised by the Terrorism and Violent Crime Section of the Criminal Division, and its staff attorneys are available for consultation on issues such as whether to file a motion with the court to transfer the juvenile to adult prosecution. *See* USAM 9-8.130.

This chapter contains the Department's policy relating to the prosecution of juveniles. For the definition of "juvenile," a brief description of juvenile delinquency proceedings, and several legal issues related to juvenile prosecutions, see the Criminal Resource Manual at 38 et seq.

9-8.010 Armed Forces Enlistment as an Alternative to Federal Prosecution

Plea or sentence bargaining agreements should not be contingent on, or contain provisions designed to facilitate, enlistment in the Armed Services. This sort of agreement is contrary to Regulations of the Armed Services, because persons enlisting under such conditions are not properly motivated to become an effective member of the Armed Forces.

There may be exceptional cases in which imminent military service, together with other factors, may be considered in deciding to decline prosecution if the offense is insubstantial, the offender is generally of good character, and has no criminal record.

9-8.110 Certification

With one limited exception (the certification requirement does not apply to violations of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, *see* S. Rep. No. 98-225, at 388), a juvenile cannot be

proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate United States District Court that (1) the juvenile court or other appropriate state court does not have jurisdiction or refuses to assume jurisdiction over the juvenile with respect to the alleged act of juvenile delinquency; or (2) the state does not have available programs and services adequate for the needs of juveniles; or (3) the offense charged is a crime of violence or an offense described in 18 U.S.C. §§ 922(x), 924(b),(g), or (h), or 21 U.S.C. §§ 841, 952(a), 953, 955, 959, or 960(b)(1), (2), or (3) and there is a substantial federal interest that justifies the exercise of federal jurisdiction. *See* 18 U.S.C. § 5032.

The authority to proceed with this certification has been delegated to United States Attorneys. Attorney General Order No. 579-74 (28 C.F.R. § 0.57) and the Memorandum dated March 12, 1985, to all United States Attorneys from Stephen S. Trott, Assistant Attorney General for the Criminal Division. Consultation with state officials is important in determining the appropriate method of proceeding. In this regard, it is important to note that a number of states consider persons to be adults for purposes of criminal prosecution at an age younger than eighteen years of age.

Sample certification forms are in the Criminal Resource Manual at 42 and 150.

9-8.120 Filing of the Complaint

The Department does not interpret 18 U.S.C. § 5032 as requiring certification prior to the filing of a complaint and issuance of an arrest warrant. That part of 18 U.S.C. § 5032 which states "[i]f the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such state" necessarily implies that an arrest procedure has been completed. Upon a juvenile's arrest, the United States Attorney should expeditiously determine whether there is a substantial basis to file a certification invoking federal jurisdiction. Nor should certification be required in cases where a juvenile is brought before a judge for a Federal Rule of Criminal Procedure 40 removal hearing. The United States Attorney in the district where the crime was committed or the complaint was filed is the only party who can make the proper determination of whether one of the factors necessary for certification exists or whether the case should be turned over to state authorities.

9-8.130 Motion to Transfer

Section 5032 of Title 18 provides several avenues for adult prosecution of a juvenile. The first arises when the juvenile has requested in writing, upon advice of counsel, to be proceeded against as an adult. A second involves the filing of a "motion of transfer" in cases involving juveniles thirteen years or older who have committed certain classes of offenses (Native American juveniles ages 13 and 14 may not be transferred unless their tribe has elected such treatment). In the latter case, after filing of the motion to transfer (Motion to Proceed Against the Juvenile as an Adult) in the United States District Court, the court must conduct a hearing to determine whether such prosecution would be in the interest of justice. In making this determination, the court must separately consider each of the criteria set out in the fifth paragraph of 18 U.S.C. § 5032. In doing so it must receive evidence on each of the factors set out, and make oral or written findings in the record with regard to each of those factors.

Repeat Offenders. When a juvenile, after his or her sixteenth birthday, is charged with certain felonies involving violence or the potential for violence, certain weapons offenses or particular drug crimes, or a particularly dangerous crime, and there has been a previous Federal or State adjudication for those types of offenses, a mandatory transfer of the case may be requested under the statute. *See* 18 U.S.C. § 5032.

The decision to proceed against a juvenile as an adult in district court was delegated to the United States Attorneys by then Assistant Attorney General Jo Ann Harris in a Memorandum dated July 20, 1995. However, to maintain uniformity, United States Attorneys should notify the Terrorism and Violent Crime Section of the

Criminal Division (TVCS) prior to authorizing that a motion to transfer be filed. Be aware that Native American juveniles who are 13 and 14 years of age may not be transferred unless their tribe has elected such treatment.

If a juvenile is transferred for prosecution and is convicted of a lesser charge which could not have supported the transfer, the disposition of the juvenile is to proceed in the same manner as if he/she had been adjudicated delinquent rather than criminally convicted.

9-8.140 Arrest of a Juvenile

For information concerning the arrest and questioning of a juvenile, see the Criminal Resource Manual at 43 and 44.

9-8.150 Detention of Juveniles

For a discussion of the laws governing the detention of juveniles, see the Criminal Resource Manual at 45.

9-8.190 Prosecutorial Discretion

Prosecutors have discretion to forego prosecutions in the interest of justice. Similarly, selective prosecution is not a denial of equal protection unless the selection is based on an unjustifiable standard such as race or religion. See *United States v. Goodwin*, 457 U.S. 368, 380 n. 11 (1982); *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978); *Oyler v. Boles*, 368 U.S. 448, 456 (1962). United States Attorneys should continue to exercise their discretion in a manner consistent with the best interests of society and the criminal justice system.

The use of any pre-trial diversion program, including the "Brooklyn Plan," for juveniles is inappropriate unless the certification requirements of the law have been met and the pre-trial diversion guidelines set out by the Department have been complied with. See USAM 9-22.000 *et seq.* (Pretrial Diversion).

9-8.200 Jury Trials

The law does not require jury trial for juveniles, and the Department opposes them. For a summary of decisions, see *United States v. Cuomo*, 525 F.2d 1285 (5th Cir. 1976).

9-8.210 Notification

United States Attorneys should insure that the law enforcement officers in their judicial district are made aware of the notification requirements of 18 U.S.C. § 5033. These include advice to an arrested juvenile of constitutional rights, and notice of custody to the United States Attorney and the juvenile's parents or custodian. The arresting officer must also notify the parents or custodian of the rights of the juvenile, and of the nature of the alleged offense.

9-8.220 Public Information Concerning Juveniles

Subsections (a) through (c) of 18 U.S.C. § 5038 guard against improper disclosure of juvenile records. Subsection (d) provides for the routine fingerprinting and photographing of juveniles prosecuted as adults and juveniles adjudicated delinquent with respect to offenses that are felonies involving violence or serious drug crimes. Fingerprints and photographs of juveniles not prosecuted as adults which were obtained for specific investigative purposes may be made available only in accordance with the provisions of 18 U.S.C. § 5038(a).

Subsection (e) prohibits the publication of the name or picture of any juvenile in connection with a juvenile delinquency proceeding.

Additionally, there are laws that restrict the information that government employees may release about any child victim or witness. *See* the Criminal Resource Manual at 46.